



UNITED STATES PATENT AND TRADEMARK OFFICE

5

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/828,563	04/21/2004	Robert Korn	KORN 201- KFM	5265

7590 09/13/2006

Karl F. Milde, Jr., Esq.
MILDE, HOFFBERG & MACKLIN, LLP
Suite 460
10 Bank Street
White Plains, NY 10606

EXAMINER

FETSUGA, ROBERT M

ART UNIT PAPER NUMBER

3751

DATE MAILED: 09/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/828,563	Applicant(s) KORN, ROBERT	
	Examiner Robert M. Fetsuga	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on June 05, 2006 & July 31, 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "substantially perpendicularly" feature (both recitations) and "extending parallel" feature (both recitations) set forth in claim 1, subject matter set forth in claims 3, 7 and 13, "at least two" feature set forth in claim 4, and "at least one" feature set forth in claims 14 and 15, could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

Applicant argues at pages 11-12 of the response filed June 05, 2006 proper antecedent bases for the noted terminology are provided at pages 3-5 of the instant specification. The examiner can not agree, as pages 3-5 are not part of the detailed description portion of the disclosure, and the terms of claims 3, 4, 7 and 15 are not present at all.

2. Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the

time the application was filed, had possession of the claimed invention.

Claim 1 now recites a support rail "consisting essentially of" some listed elements. This subject matter is not found in the originally filed disclosure and is therefore considered to be new matter. In fact, applicant implies in the response filed July 31, 2006 (pg. 3) this claim language excludes all elements not recited in claim 1. However, this unsubstantiated position contradicts both the presence of dependent claims 2-19, and page 12 of the original specification.

3. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is unclear as to the metes and bounds of the phrase "consisting essentially of" (ln. 4). The instant disclosure does not give any meaning to this language. Likewise, applicant has not addressed the meaning of this language as was required in responding to the Office action mailed April 26, 2006.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

Art Unit: 3751

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 3, 4 and 7, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Van Riemsdyck.

The Van Riemsdyck reference discloses a support rail comprising: a hand rail 62; two horizontal anchors 38 including end pieces 42 and suction cups 66; and two vertical anchors 28 including end pieces 29 and suction cups 66, as claimed. Re claim 4, the language is relative and connotes no definite structure. Since it is not understood how the "consisting essentially of" phrase of amended claim 1 can alter mechanical claim scope from the originally presented "comprising" phrase, the claims are still considered to be anticipated. Applicant has not pointed out in any response any examiner error regarding this finding of anticipation.

6. Claims 8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Riemsdyck and Morrison.

Although the anchors of the Van Riemsdyck bathtub support do not include pivotal connections, as claimed, attention is directed to the Morrison reference which discloses an analogous bathtub support which further includes an anchor 3 having a pivotal connection 6 (for example). Therefore, in consideration of Morrison, it would have been obvious to one of ordinary skill in the bathtub support art to associate pivotal connections with the Van Riemsdyck anchors in order to accommodate different wall slopes.

Applicants' argument at page 13 of the response filed June 05, 2006 concerning Morrison does not address the grounds of rejection and therefore is considered moot. Applicants' argument at pages 14-16 of the response filed June 05, 2006 does not point out any error in the examiners' finding of facts establishing the prima facie case of obviousness and therefore is considered moot.

7. Claims 4, 13, 14 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Riemsdyck and Slater.

Although the Van Riemsdyck bathtub support does not include plastic piping, as claimed, attention is directed to the Slater reference which discloses an analogous bathtub support which further includes plastic piping (col. 1 lns. 58-61). Therefore, in consideration of Slater, it would have been obvious to one of

ordinary skill in the bathtub support art to associate plastic piping with the Van Riemsdyck bathtub support as being corrosion and heat resistant. Re claim 20, the choice of color would appear an obvious choice to be made.

Applicant's argument at page 14 of the response filed June 05, 2006 concerning Slater does not address the grounds of rejection and therefore is considered moot. Applicants' argument at pages 14-16 of the response filed June 05, 2006 does not point out any error in the examiners' finding of facts establishing the prima facie case of obviousness and therefore is considered moot.

8. Claims 1, 3, 4 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tilson et al., Van Riemsdyck and Sullivan.

The Tilson et al. (Tilson) reference discloses a hand rail comprising: a hand rail 26; two horizontal anchors 70,72; and two vertical anchors 54. Re claim 4, the language is relative and connotes no definite structure. Therefore, Tilson teaches all claimed elements except for the provision of suction cups.

Although the anchors of the Tilson bathtub support do not include suction cups, as claimed, attention is directed to the Van Riemsdyck reference which discloses an analogous bathtub support which further includes anchors 28,38 having suction

Art Unit: 3751

cups 66. Therefore, in consideration of Van Riemsdyck, it would have been obvious to one of ordinary skill in the bathtub support art to associate suction cups with the Tilson anchors in order to facilitate removal after use. Furthermore, the Sullivan reference is cited as evidence that one skilled in the bathtub support art would recognize the need to avoid engaging suction cups over a tile grout line (col. 2 lns. 59-64).

Applicant argues at page 13 of the response filed June 05, 2006 the support rail of Tilson is unsuitable for a child because it is mounted outside the bathtub. The examiner can not agree and notes applicant has not pointed to any evidence in support of this contention. In any event, the "bathtub" is merely recited as intended use environment in claim 1 rather than as a structural limitation. Applicants' argument at pages 13-14 of the response filed June 05, 2006 concerning Sullivan does not address the grounds of rejection and therefore is considered moot. Applicants' argument at pages 14-16 of the response filed June 05, 2006 does not point out any error in the examiners' finding of facts establishing the prima facie case of obviousness and therefore is considered moot.

9. Claims 1, 3, 4, 7, 8 and 11 are rejected under 35

U.S.C. 103(a) as being unpatentable over Tilson, Van Riemsdyck

Art Unit: 3751

and Sullivan as applied to claim 1 above, and further in view of Morrison.

To associate pivotal connections with the Tilson anchors would have been obvious to one of ordinary skill in the art in consideration of Morrison analogous to the discussion supra.

10. Claims 2, 4-6 and 9-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tilson, Van Riemsdyck and Sullivan as applied to claim 1 above, and further in view of Slater.

Re claim 2, to associate plastic piping with the Tilson bathtub support would have been obvious to one of ordinary skill in the art in consideration of Slater analogous to the discussion supra. Re claim 13, the choice of rail material would appear an obvious choice to be made. Slater also teaches use of commonly available pvc piping which conveniently includes elbow connectors and T-connectors. Re claim 20, the choice of color would appear an obvious choice to be made.

11. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

12. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3751

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday. The Office central fax number is 571/273-8300.



Robert M. Fetsuga
Primary Examiner
Art Unit 3751